

REMARKS

Claims 1, 3, 6, 7 and 9 are pending in this case. The Examiner rejected the pending claims under 35 USC 101 and 112. Claims 1, 3, 6 and 7 have been amended. The foregoing amendments and the following remarks are considered by applicant to overcome each of the Examiner's outstanding rejections. An early Notice of Allowance is therefore requested.

The Examiner objected to claims 1, 6 and 7 due to certain informalities. The Examiner suggested numerous amendments to increase the clarity of the claims. Each of the suggested amendments were adopted in the present amendments. Accordingly, the objections have been traversed.

On page 3, paragraph 2 of the office action, the Examiner rejected claim 6 pursuant to 35 USC 101 because the Examiner contended that claimed invention was directed to non-statutory subject matter. In particular, the Examiner asserted that the claim recited the markers that are attached to the four limbs of the infant, which would claim the device in combination with the infant. Claim 6 has been amended to specify that the feather image extracting means is capable of extracting the marker images. Thus, the markers attached to the four limbs are not affirmatively claimed as part of the claim. Accordingly, this rejection is traversed.

On page 4, paragraph 4 of the office action, the Examiner rejected claims 1, 3, 6, 7 and 9 under 35 USC 112, second paragraph. In general, the Examiner objected to the claim language on the basis that it describes a particular action that the device has to perform rather than reciting a capability of the device. For claim 1, the Examiner specified lines 2, 4 and 20 (photographing, determining and determining) as having adopted the objectionable language. Claim 1 has been amended to recite that the device is capable of performing the action instead of positively reciting the action.

The Examiner rejected claim 1 because the claim was unclear if the clause "in the movements of the four limbs determined by said limb movement determining means" is referring to the phrase "for extracting." If that was the situation, the Examiner suggested a claim amendment to clarify the language. The Examiner's suggested claim amendment has been adopted in the above amendment.

The Examiner also rejected claim 1 because, in lines 17 and 20-21, it was unclear as to what the phrase "existence/nonexistence" is referring to and made a suggested changes to clarify

that reference. The applicant has adopted the Examiner's suggestion to clarify the claim language.

The Examiner also rejected claim 1 because, in lines 33-34, 36-37, 39-40 and 42-43, some of the claim language was unclear if it recited two markers on one limb or one on different limbs. Claim 1 has been amended to clarify that ambiguity.

On pages 6-7 of the office action, the Examiner rejected claims 3 and 9 because some of the claim language recited an action as a positive claim element. These claims have been amended to specify that the device is "capable" of performing those actions.

On page 7 of the office action, the Examiner rejected claim 6 because it was unclear whether the markers were positively claimed as elements. As noted above, claim 6 has been amended to recite a capability of the extracting means and not to claim the markers positively.

On page 7 of the office action, the Examiner rejected claim 7 stating that it is unclear whether the database being claimed actually physically contains data which was already obtained. Claim 7 has been amended to adopt the suggestions from the Examiner to specify that the database did contain that data.

The Examiner also rejected claim 7 because it appeared to recite an action as a positive element. Claim 7 has been amended to specify that the device is capable of performing that action.

The Examiner also indicated that claim 7 contained the same ambiguity as claim 1 with regard to the amount of markers that attached to the limbs. Claim 7 has also been amended to correct those ambiguities.

The Examiner indicated that claims 1 and 7 would be allowable if rewritten to overcome the rejections under 35 USC 112, second paragraph. As indicated above, claims 1 and 7 have been amended to overcome those rejections and accordingly should be allowable.

The Examiner also indicated that claims 3, 6 and 9 would be allowable if rewritten to overcome the rejections under 35 USC 112, second paragraph and 35 USC 101 and be rewritten as independent claims. Claims 3, 6 and 9 have been rewritten to overcome the rejections under 35 USC 112, second paragraph and 35 USC 101. They have not been rewritten as independent claims, but since claims 3, 6 and 9 either depend from amended claims 1 or 7 and should be allowable for the same reason that claims 1 and 7 are allowable.

In view of the foregoing, it is respectfully submitted that the claims are in condition for allowance and favorable reconsideration and prompt notice to that affect are earnestly solicited.

Respectfully submitted,



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